

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House  
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**FISCAL IMPACT STATEMENT**

**LS 7950**

**BILL NUMBER:** HB 1892

**DATE PREPARED:** Mar 21, 2001

**BILL AMENDED:** Mar 20, 2001

**SUBJECT:** Methamphetamine.

**FISCAL ANALYST:** Mark Goodpaster

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**FUNDS AFFECTED:** ☒ **GENERAL**  
☒ **DEDICATED**  
**FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) This bill has the following provisions:

- (A) It changes current law to allow a person charged with delivering a controlled substance to be eligible for treatment in lieu of prosecution.
- (B) It allows a professional board or commission that regulates a profession which requires a license, to suspend the license if the person who holds the license has or obtains a conviction for possession of manufacturing or dealing in methamphetamine. It also allows the Indiana Emergency Medical Services Commission to permanently revoke the license or permit of a person who provides emergency medical services if the person has or obtains a conviction for dealing in methamphetamine
- (C) It changes the current law, Uniform Food, Drug, and Cosmetic Act, to expand the definition of a misbranded drug to include a substance that includes methamphetamine.
- (D) It creates a Class A misdemeanor for storing or transporting anhydrous ammonia or ammonia solution, unless the ammonia is stored in a container that meets requirements under current law and for dumping or otherwise discarding the chemicals or waste product resulting from manufacture of controlled substance.
- (E) It changes current law regarding juvenile court jurisdiction for certain crimes. It provides that a person at least 16 years of age who has two unrelated offenses for dealing cocaine, narcotic drug, methamphetamine, or a schedule I, II, or III substance does not fall under the jurisdiction of the juvenile court. However, a person at least 16 years of age charged with one of the above enumerated offenses may be eligible to remain in juvenile court.
- (F) It amends the CHINS portion of the Indiana Code to provide a rebuttable presumption exists that a child who resides in a place where illegal drugs are manufactured is seriously endangered.
- (G) It changes the seizure statutes to allow the seizure of a vehicle if the vehicle is used or intended to be used as transportation in order to deal methamphetamine or possess methamphetamine.
- (H) It provides immunity to a person who is a victim of theft of anhydrous ammonia. The immunity applies if after the theft of the anhydrous ammonia, the possession or use of the anhydrous ammonia causes injury or damage to a person or other structure.
- (I) It changes the current law to allow a law enforcement agency to destroy controlled substances or

chemicals seized in connection with manufacture of illegal drugs under certain conditions.

(J) It expands the current law which gives courts aggravating and mitigating circumstances to consider when imposing a sentence. It broadens the definition of controlled substance offense to include dealing or possession of methamphetamine.

(K) It allows a court to directly place a person in a community corrections program if the person is convicted of a controlled substance offense as a Class A or Class B felony.

(L) It adds proximity to youth program centers as an enhancement of certain controlled substance offenses if they occur within 1,000 feet of a youth program center.

(M) It amends the felony murder rule to include dealing in methamphetamine.

(N) It expands the RICO statute to include in the definition of racketeering activity dealing in methamphetamine.

(O) It expands the definition of serious violent felony to include dealing in methamphetamine.

(P) It amends the meaning of "manufacture" to include activity where a person produces a controlled substance for the person's own use.

(Q) It amends the dealing in cocaine or narcotic drug statute to include methamphetamine. It also amends the section elevating the offense to an A felony if the person "manufactures" within prohibited areas.

(R) It amends the possession of cocaine or narcotic drug statute to include methamphetamine. It also amends the criteria necessary to enhance the offense to a higher level felony.

(S) It amends the visiting or maintaining a common nuisance statute to include the manufacturing of controlled substances.

(T) It amends the law regarding possession of chemical reagents (substances associated with production of controlled substances) to include ammonia solution.

(U) It provides a defense to a specified element in a controlled substance offense. It states that it is a defense to a charge that a person was dealing within a prohibited zone (school, park, etc..) if the person was: (1) briefly in the zone and not selling to a person under 18 and 3 years junior to the seller within the prohibited zone; or (2) in the prohibited zone at the suggestion of law enforcement or an agent of law enforcement.

(V) It specifies when the minimum sentence for a crime may not be suspended (requiring incarceration).

(W) It includes a noncode provision that prohibits ex post facto uses.

**Effective Date:** July 1, 2001.

**Explanation of State Expenditures:** (Revised) This bill includes nine provisions that could increase the number of persons charged with crimes related to the possession, manufacturing, and distribution of methamphetamine. If more persons are convicted and sentenced for crimes related to methamphetamine, then the number of persons who are sentenced to Department of Correction (DOC) facilities may increase. This bill also has five provisions that could reduce the length of time that offenders committed to DOC facilities could remain in prison. These provisions are described in the following narrative.

**Background:** Under current law, the following sentences are applicable for persons who are sentenced for felonies:

<b>Felony Class</b>	<b>Minimum</b>	<b>Presumptive</b>	<b>Maximum</b>	<b>Average Time Served</b>
Murder	45 years	55 years	65 years	17 years, 6 months
A	20 years	30 years	50 years	8 years, 4 months
B	6 years	10 years	20 years	3 years, 6 months
C	2 years	4 years	8 years	2 years
D	six months	1.5 years	3 years	10 months

The following shows the number of offenders who have been committed to DOC facilities for fiscal years between 1996 and 2000.

<b>Felony</b>	<b>Offense</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
A	Dealing in Schedule I, II, or III Controlled Substance	6	2	1	6	16
A	Dealing in Cocaine or a Narcotic Drug	74	79	87	114	127
B	Dealing in Cocaine or Narcotic Drug	436	483	455	535	678
B	Dealing in a Schedule I, II, or III controlled Substance	48	83	80	121	187
A	Possession of Cocaine or Narcotic Drug	5	6	4	11	31
B	Possession of Cocaine or Narcotic Drug	16	31	37	61	100

***Provisions Enhancing Drug Crimes and Potentially Increasing Prison Population:***

**Addition or Enhancement**

**Potential Effect**

Unauthorized storing or transporting anhydrous ammonia or ammonia solution

New Class A misdemeanor

Dumping or otherwise discarding the chemicals or waste product resulting from manufacture of controlled substance

New Class D felony

Expands the current law which gives courts aggravators and mitigators to consider when imposing a sentence for intentionally transmitting HIV during the delivery of a controlled substance

The court may use this additional aggravating circumstance to impose a longer prison sentence.

Adds proximity to a youth program center is a place to allow enhancement of certain controlled substance offenses if they occur within 1,000 feet of the center.

This could enhance offenses that could be charged from Class B and D felonies to Class A and C felonies for either dealing in, possession of, or manufacturing controlled substances.

Amends the felony murder rule to include dealing in methamphetamine.

This could make the prosecution of a murder easier for the prosecuting attorney to prove.

Expands the RICO statute to include in the definition of racketeering activity dealing in methamphetamine.

This could result in additional persons charged with corrupt business influence, a Class C felony.

### **Addition or Enhancement**

Expands the definition of serious violent felony to include dealing in methamphetamine.

Amends the visiting or maintaining a common nuisance statute to include the manufacturing of controlled substances.

Amends the law regarding possession of chemical reagents (substances associated with production of controlled substances) to include ammonia solution. It makes it a felony for a person to possess anhydrous ammonia with intent to manufacture methamphetamine.

### **Potential Effect**

This could result in additional persons charged with unlawful possession of a firearm by a serious violent offender, a Class B felony.

The offense remains a Class D felony, but persons who manufacture a controlled substance could also be charged with maintaining a common nuisance.

Persons violating this statute commit a Class D felony. If the crime occurred with specified aggravating circumstances, the offense is a Class C felony.

***Provisions Reducing Drug Crimes and Potentially Reducing Prison Population:*** These provisions could reduce the number of offenders in DOC facilities by reducing their lengths of stay.

### **Possible Reductions**

Allows a person charged with delivering a controlled substance to be eligible for treatment in lieu of prosecution.

Allows a person at least 16 years of age charged with one of the above enumerated offenses to be eligible to remain in juvenile court.

This allows a court to directly place a person in a community corrections program if the person is convicted of a controlled substance offense as a Class A or Class B felony.

This provides a defense to a specified element in a controlled substance offense. States that it is a defense to a charge that a person was dealing within a prohibited zone (school, park, youth center) if the person was: (1) briefly in the zone and not selling to a person under 18 and 3 years junior to the seller within the prohibited zone; or (2) in the prohibited zone at the suggestion of law enforcement or an agent of law enforcement.

### **Potential Effect**

This could reduce the number of offenders in prison, but likely would have very little impact.

This could reduce the number of juveniles who are waived to adult court and sentenced as adults. The number of juvenile offenders sentenced as delinquents to DOC juvenile facilities could increase. Juvenile delinquents may stay in DOC facilities until the age of 21.

This could reduce the number of offenders who are placed in DOC facilities and increase the number in community corrections programs.

This could reduce the felony that is charged for persons from Class A and C felonies to Class B and D felonies.

### **Possible Reductions**

This amends the statute that prescribes when the minimum sentence for a crime may not be suspended (requiring incarceration).

### **Potential Effect**

Under current law, a person who is convicted of dealing in a controlled substance must serve the minimum sentence of 20 years of a Class A felony. As proposed, the number of offenders who would be required to serve a mandatory minimum sentence would be those who are convicted for dealing when the person possessed a firearm or delivered or intended to deliver to a person under 18 years of age at least three years junior to the person.

### ***Other Provisions Affecting State Agencies:***

Boards or commissions which grant professional and occupational licenses could suspend the license if the person who holds the license has or obtains a conviction for possession of manufacturing or dealing in methamphetamine. The Indiana Emergency Medical Services Commission would permanently revoke the license or permit of a person who provides emergency medical services if the person has or obtains a conviction for dealing in methamphetamine.

A rebuttable presumption would be established that a child who resides in a place where illegal drugs are manufactured is seriously endangered. This could increase the number of children who could be placed in foster care on either a temporary or permanent basis.

Vehicles used or intended to be used as transportation in order to deal methamphetamine or possess methamphetamine could be seized by the State Police. This could increase the amount of assets that the state police may retain.

A law enforcement agency would be permitted to destroy controlled substances or chemicals seized in connection with manufacture of illegal drugs provided that the law enforcement agency preserves and photographs amounts sufficient to proceed with prosecution of the case.

Allowing a person charged with delivering a controlled substance to be eligible for treatment in lieu of prosecution could increase the costs for the Division of Addiction Services if the number of criminal defendants request deferral under this section of the law. Few defendants reportedly receive treatment through this portion of the statute.

The average expenditure to house an adult offender was \$20,700 in FY 1999. Individual facility expenditures ranged from \$14,936 to \$37,807. (This does not include the cost of new construction.) If offenders can be housed in existing facilities with no additional staff, the average cost for medical care, food, and clothing is approximately \$1,825 annually, or \$5 daily, per prisoner.

**Explanation of State Revenues:** If additional court cases occur and fines are collected, revenue to both the Common School Fund and the state General Fund would increase. The maximum fine for murder and felony convictions is \$10,000. Criminal fines are deposited in the Common School Fund. If the case is filed in a circuit, superior, or county court, 70% of the \$120 court fee that is assessed and collected when a guilty verdict is entered would be deposited in the state General Fund. If the case is filed in a city or town court, 55% of the fee would be deposited in the state General Fund.

In addition, persons convicted of a drug-related offense may also be liable for a drug abuse, prosecution, interdiction, and correction fee ranging between \$200 and \$1,000. The revenue collected from this fee is deposited in the State User Fee Fund and distributed to state and local programs.

**Explanation of Local Expenditures:** (Revised) If more defendants are detained in county jails prior to their court hearings, local expenditures for jail operations may increase. The average cost per day is approximately \$44.

Changing the seizure statutes to allow the seizure of a vehicle if the vehicle is used or intended to be used as transportation in order to deal methamphetamine or possess methamphetamine could increase the amount of assets that the state police or local law enforcement agencies may be able to retain.

The bill also changes the current law to allow a law enforcement agency to destroy controlled substances or chemicals seized in connection with manufacture of illegal drugs provided that the law enforcement agency preserves (and photographs) amounts sufficient to proceed with prosecution of the case.

**Explanation of Local Revenues:** If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from the following sources: (1) The county general fund would receive 27% of the \$120 court fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. (2) A \$3 fee would be assessed and, if collected, would be deposited into the county law enforcement continuing education fund. (3) A \$2 jury fee is assessed and, if collected, would be deposited into the county user fee fund to supplement the compensation of jury members.

In addition, if a person is convicted of a drug-related offense, a sentencing court may assess a marijuana eradication fee of not more than \$300 if the county has established a Weed Control Board. The court may also assess an alcohol and drug services program fee of not more than \$300 if a local government has established an alcohol and drug services program. Revenue collected from the marijuana eradication fee is deposited into the county user fee fund. Revenue collected from the alcohol and drug services program fee is deposited in the county or city or town user fee fund.

**State Agencies Affected:** Department of Correction; Emergency Medical Services Commission; Health Professions Bureau; Professional Licensing Agency.

**Local Agencies Affected:** Trial courts, local law enforcement agencies.

**Information Sources:** Indiana Sheriffs Association, Department of Correction.